ENTERED

January 05, 2018
David J. Bradlev, Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS CORPUS CHRISTI DIVISION

COASTAL BEND ENTERPRISES LLC; §
dba BIG HOUSE BURGERS AND BIG
HOUSE BAR BQ, §
Plaintiffs, §
VS. \$ CIVIL ACTION NO. 2:17-CV-00322
\$
EVANSTON INSURANCE COMPANY, §
et al, \$
Defendants. \$

ORDER

This state law action was removed to this Court based on diversity jurisdiction, with Defendant Evanston Insurance Company (Evanston) arguing that the non-diverse Defendants are improperly joined. On this date, the Court heard arguments on Plaintiff's Motion to Remand (D.E. 5). In open court, Plaintiff requested leave to amend to cure factual insufficiencies in its pleading, which request Evanston opposed.

The Court holds that permitting Plaintiff to amend is consistent with evaluating whether Defendant has met its burden of proof to demonstrate not only that Plaintiff has not alleged a viable claim against the non-diverse Defendant but that "there is absolutely no possibility that the plaintiff will be able to establish a cause of action against the non-diverse defendant in state court." *Griggs v. State Farm Lloyds*, 181 F.3d 694, 699 (5th Cir. 1999). Removal is ordinarily evaluated on the record as it existed at the time of removal. However, allowing a limited exception for amended complaints in response to fraudulent or improper joinder arguments where there is no evidence or argument of 1/2

prejudice is appropriate in the interest of fairness and justice. *See generally, Bell v. Terminix Int'l Co. Ltd. P'ship*, No. 16-00012 ACK-KSC, 2016 WL 3166318, at *4–7 (D. Haw. June 6, 2016) (citing *Hart v. Bayer Corp.*, 199 F.3d 239, 248 n.6 (5th Cir. 2000).

The Court GRANTS Plaintiff's oral motion for leave to amend and ORDERS Plaintiff to file any such amended complaint on or before seven (7) days from the date of this Order. The Court TAKES UNDER ADVISEMENT the motion to remand (D.E. 5) pending filing of the proposed amended complaint.

ORDERED this 5th day of January, 2018.

NELVA GONZALÉS RAMOS

UNITED STATES DISTRICT JUDGE